

STATE OF MICHIGAN  
COURT OF APPEALS

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MONYA MALOY, Personal Representative of the  
Estate of YVONNE MALOY, Deceased,

UNPUBLISHED  
April 26, 2007

Plaintiff-Appellee,

v

ST. JOHN DETROIT RIVERVIEW HOSPITAL,  
a/k/a ST. JOHN HEALTH SYSTEM—DETROIT  
—MACOMB CAMPUS,

No. 273292  
Wayne Circuit Court  
LC No. 03-328685-NH

Defendant-Appellant,

and

ACE HOMECARE NETWORK, INC. and ASGAR  
MOHIUDDIN, M.D.,

Defendants.

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Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

In this wrongful death medical malpractice action, this Court originally denied defendant St. John Detroit Riverview Hospital's application for leave to appeal a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(10).<sup>1</sup> Subsequently, in lieu of granting leave to appeal, our Supreme Court remanded the case to this Court for consideration as on leave granted.<sup>2</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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<sup>1</sup> *Maloy v St John Detroit Riverview Hosp*, unpublished order of the Court of Appeals, entered January 20, 2006 (Docket No. 267229).

<sup>2</sup> *Maloy v St John Detroit Riverview Hosp*, 477 Mich 871; 721 NW2d 585 (2006).

This Court reviews de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). When reviewing a motion made pursuant to MCR 2.116(C)(10), which tests the factual support for a plaintiff's claim, "this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Id.*

An amended complaint filed by plaintiff in December 2005 alleged St. John's vicarious and independent liability in ordinary negligence premised on the actions of social worker Raynetta White in preparing a discharge form regarding the decedent's home health care. St. John sought summary disposition of the "ordinary negligence" allegations on the basis that they sounded in medical malpractice.

A medical malpractice claim is distinguished by two defining characteristics. First, medical malpractice can occur only within the course of a professional relationship. Second, claims of medical malpractice necessarily raise questions involving medical judgment. Claims of ordinary negligence, by contrast, raise issues that are within the common knowledge and experience of the fact-finder. . . .

\* \* \*

After ascertaining that the professional relationship test is met, the next step is determining whether the claim raises questions of medical judgment requiring expert testimony or, on the other hand, whether it alleges facts within the realm of a jury's common knowledge and experience. *If the reasonableness of the health care professionals' action can be evaluated by lay jurors, on the basis of their common knowledge and experience, it is ordinary negligence.* If, on the other hand, the reasonableness of the action can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts, a medical malpractice claim is involved. . . . [*Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 422-423; 684 NW2d 864 (2004) (emphasis added, internal quotation and citations omitted).]

The crux of this case involves whether lay jurors could evaluate the amended complaint's allegations. The negligence allegations in the amended complaint arise from the deposition testimony of White, who specifically described the general nature of her actions in preparing continuing patient care (CPC) forms. Although White held degrees in social work, she denied that her preparation of the hospital's CPC forms would have involved her provision of social work-related assessments or activities. White explained that when third-floor patients at the hospital were deemed ready for discharge, she would fill out CPC forms solely to facilitate "discharge planning, setting up home care arrangements." White summarized as follows her function in preparing the CPC forms:

*White:* Okay. My obligation was to report all significant information about the patient for home care arrangements.

\* \* \*

Okay. We would get a doctor's order to follow either for home care or making disposition arrangements, and the doctor would give us a discharge date when the patient would be ready and whatever his orders would be upon discharge for that patient.

\* \* \*

*Q.* Okay. So does somebody—is the order written into the chart and then somebody relays the order to you directly?

*White:* It's written in the chart, and the chart is usually given to us.

\* \* \*

*Q.* Okay. So just tell me what your habit and routine would normally have been back then at this time, October 8, 2001, as it relates to what arrangements you would make and what—what you would actually do in order to get [the decedent] scheduled for home care.

*White:* Okay. *We are given the order for discharge planning . . . the specific orders that the doctor is requesting. We would collect information from the chart, we would look at the insurance information and . . . our information is based on what the doctor provides for us in the charting.* [Emphasis added.]

*Q.* Okay. Which doctor are you talking about . . . with respect to [the decedent's] case?

*White:* Dr. [Michael Schuneckt], the surgeon.

*Q.* Okay. Were you aware of any discharge orders as it related to [the decedent's] insulin?

\* \* \*

*White:* *We would read the history and physical on the chart, and whatever information is in that particular chart we would at least acknowledge on the CPC.* [Emphasis added.]

\* \* \*

*Q.* Okay. So when you would normally go and look at the records, you'd look not only at the doctor's order to see what he ordered, but you'd be free to look at whatever records you felt might be important to—to help you fill out the CPC form; correct?

*White:* Yes.

*Q.* And what records do you normally . . . look at? I mean you wouldn't look at every record of the entire chart, I assume?

*White*: You would look at the pertinent information that you need, and that's usually contained in the history and physical. Sometimes if it's not in the history and physical, you may gather it in the progress note of the physician.

White also explained that she would have verified home address and telephone numbers with the patient awaiting discharge, but denied that from this contact she could have rendered any opinion regarding the patient's medical condition. When specifically questioned why no mention of insulin appeared on the CPC concerning the decedent, White responded that "[t]his order came from Dr. [Schuneckt], and we were dealing with the colostomy aspect of why [the decedent] needed home care," and that in addition to the medications specifically ordered by Dr. Schuneckt she had noted on the CPC, "Check medications at home," as an instruction to the home care nurse to "also look at those medications the patient is on at home."

We conclude that the amended complaint's allegations regarding White's preparation of the CPC sound in ordinary negligence. White's un rebutted deposition testimony establishes that at no point in filling out CPCs at the hospital did she act in her capacity as a social worker or otherwise attempt to form an opinion regarding the decedent's medical condition. Furthermore, White did not exercise independent medical judgment in filling out the CPCs, but instead simply copied or transferred onto the CPC forms the discharge-related information required by the CPC from existing, already available sources, primarily doctors' orders and the patient's chart's history and physical information, and sometimes from doctor progress notes in the chart. We conclude that no expert testimony concerning medical standards of care is necessary for a jury to properly evaluate the amended complaint's allegation and determine whether White breached her duty of ordinary care when she omitted material information in compiling the CPC regarding the decedent. *Bryant, supra* at 423. Stated differently, "[t]he fact-finder can rely on common knowledge and experience in determining whether" White unreasonably omitted a material fact when copying information from the decedent's existing medical record into the CPC. *Id.* at 431.

Because the allegations in the amended complaint sound in ordinary negligence, the circuit court correctly denied St. John's motion for summary disposition premised on the absence of expert testimony supporting any breach of its duty of care, irrespective of the court's precise logic for denying the motion. *FACE Trading, Inc v Dep't of Consumer & Industry Services*, 270 Mich App 653, 678; 717 NW2d 377 (2006).

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood